

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6329 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ISHVERBHAI KASHIBHAI PATEL DECD.

Versus

VINUBHAI VALLABHBHAI PATEL (RESP.NO.1 STRUCK OF)

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Appearance:

MR GR SHAIKH for Petitioners

None present for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/01/97

ORAL JUDGMENT

Heard learned counsel for the petitioners.

2. The legal heirs and representatives of the deceased Ishverbhai Kashibhai Patel filed this Special Civil Application before this Court and challenge has been made by them to the order of the Mamlatdar and Agricultural Land Tribunal, Anand, in case No.551 of 1977 dated 24.4.78, the order of Collector (Tenancy Appeal),

Kheda, passed in Tenancy Appeal No.2535 of 1978 dated 31.1.82, and the order of Gujarat Revenue Tribunal made in Tenancy Appeal No.B.A.697 of 1982 dated 5.11.84.

3. All the three authorities, aforesaid, have decided the matter against the petitioner and they were held to be not deemed purchasers of the land in dispute. I have gone through the judgment of the Gujarat Revenue Tribunal at Ahmedabad, and I am constrained to observe that the Tribunal has dealt with the matter in a very cursory and perfunctory manner. The judgment of the Tribunal though runs in about seven pages, but 6 1/2 pages have been consumed by the Tribunal only for reproduction of the facts and arguments of both sides and in half page, the Tribunal has decided the appeal and the same is dismissed by observing that both the Courts below have given concurrent findings of fact and the decision on which reliance has been placed, does not help the applicant. The learned counsel who was appearing for the petitioners before the Tribunal has raised manifold contentions, but the Tribunal has not dealt with these contentions. Be that as it may. One of the contentions raised by the learned counsel for the petitioners was that the statement of Shri Vinubhai Vallabhbbhai was not admissible as the deposition has not been recorded by cross examination. The petitioners were not given the opportunity of examining the said witness and as such, the statement is not admissible in evidence. It has further been contended that the pedigree, produced by Shri Vinubhai, but the petitioners were not afforded an opportunity of cross examination with regard to the said pedigree. This contention raised by learned counsel for the petitioners goes to the root of the matter and in case any statement of witness is relied upon to decide the matter against the petitioners, and the petitioners have not been given opportunity of cross examination, then the same is not admissible. No reliance could have been placed on such statement which is not subject to cross examination by the other side. This is one of the important ground raised by the petitioners before the Tribunal which has been left without consideration. Otherwise also, the Tribunal has sufficiently wide powers to go on appreciation of evidence where it comes to conclusion that material piece of evidence has not been considered as well as it has resulted in miscarriage of justice.

4. Taking into consideration the totality of the facts of this case, the order of the Tribunal cannot be allowed stand. The order passed by the Gujarat Revenue Tribunal in No.TEN.B.A. 697 of 1982 dated 5.11.84, is

quashed and set aside and the matter is sent back to the Tribunal with directions to decide the application on merits after hearing the learned counsel for the parties and considering all the grounds raised. This Special Civil Application stands disposed accordingly. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)